

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Revision of the Commission's Rules	)	CC Docket 94-102
to Ensure Compatibility with Enhanced	)	
911 Emergency Calling Systems	)	
	)	
Amendment of Parts 2 and 25 to Implement	)	IB Docket 99-67
the Global Mobile Personal Communications)	)	
by Satellite (GMPCS) Memorandum	)	
of Understanding and Arrangements; et al.	)	

COMMENTS OF NENA AND NASNA

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NENA intends to work with NRIC VII on access to 9-1-1 by satellite providers in both their space and ATC modes. One issue raised by the use of call centers is whether a customer gives implied consent to release of number, location and other individual information when the customer is forwarded to a PSAP.

It has been 10 years with no firm decision on the essential divisions between state and federal authority over MLTS 9-1-1. The FCC possesses ample jurisdiction to order Part 68 and Part 64 rules, as proposed by NENA and APCO, and to provide more guidance to manufacturers, distributors and users of MLTS equipment.

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The National Emergency Number Association ("NENA") and the National Association of State Nine One One Administrators ("NASNA") submit these comments in response to the Second Further Notice of Proposed Rulemaking ("Further Notice") in the captioned proceeding.<sup>1</sup> The Further Notice asks for additional information and views about application of enhanced 9-1-1 ("E9-1-1") rules to satellite telephony and to Multi-Line Telephone Systems ("MLTS"), principally PBXs.

Mobile Satellite Services ("MSS")

We defer to the FCC's decision (Further Notice, ¶109) to ask for help from the National Reliability and Interoperability Council ("NRIC"), recently re-chartered for two years as NRIC VII, on the special case of handoff of satellite calls between ancillary terrestrial components ("ATC") and the primary space segments of an MSS network. NENA is represented on NRIC VII and plans to contribute on this issue in that setting.

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<sup>1</sup> Report and Order and Second Further Notice of Proposed Rulemaking, FCC 03-290, released December 1, 2003; summary published at 69 FR. 6595, February 11, 2004 ("Further Notice").

We agree with the FCC's tentative conclusion that ATC-only calls through MSS "should provide access to the same 911 services as terrestrial CMRS providers" and that "MSS carriers intending to offer ATC should be considering E911 in the design stage." (Further Notice, ¶110). NENA supports the proposal to have MSS carriers report on their call center plans prior to the February 2005 effective date of the rule. A reporting deadline of three months prior is, we believe, a bit late for the allowance of sufficient coordination time with PSAPs and 9-1-1 authorities. If possible, we would like to see such reports by August of 2004, six months ahead of the effective date.

Our principal interest in call center data is how many and how well calls are forwarded to PSAPs. A tally of total communications from subscribers to the call center, non-emergency and emergency, would allow us to track proportions of calls requiring 9-1-1 assistance. It would be helpful if NENA could receive or have access to the call center data. For this purpose, the information would be in aggregate form only, not customer-specific.

However, where a subscriber has dialed his call center in an emergency and been forwarded to a PSAP, what happens if the call is interrupted for some reason? We believe the PSAP should be able, as under Section 222(d) of the Communications Act, to request of the call center such customer-specific information as may be needed to reconnect with the caller and proceed with the emergency response.<sup>2</sup>

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<sup>2</sup> Arguably, a commercial call center itself may fit the definition of "Public Safety Answering Point" at Section 222(h)(4). If so, does a call center subscriber give "implied consent" to release of information reasonably deemed important to his rescue when he phones the center and is forwarded to a point of emergency response? It would be important to hear from call center operators on this point, particularly in the context of 18 U.S.C. §§2702 and 2703.

## Multi-Line Telephone Systems

We appreciate that a number of the issues associated with access to E9-1-1 through MLTS will be dealt with by NRIC VII, and NENA looks forward to working in that forum. At the same time, we are disappointed with the relative lack of attention the FCC has given to MLTS issues over the years since it convened a two-day meeting in September of 1996. One reason the record needs refreshing (Further Notice, ¶115) is that the Commission allowed the information generated in 1996 and 1997 to grow stale.

Reading the Further Notice together with the companion order is an exercise in ambiguity and ambivalence. On the one hand, the Further Notice (¶113) is concerned that “lack of implementation of MLTS E911 capability may create unacceptable gaps” in our emergency calling systems on which homeland security and individual safety depend. On the other hand, the order (¶¶53-55) leaves the implementation of MLTS E911 to the states without any hint as to whether and how soon states are expected to act.<sup>3</sup> On the one hand, the Further Notice recognizes “the policy question of whether MLTS E911 standards should be uniform nationally.” On the other hand, the order has concluded that “national rules governing MLTS E911 compatibility would impose unnecessary regulatory burdens” (¶50), without seeming to consider whether 50 sets of state rules would impose even greater burdens.

While the order finds NENA’s proposed Part 64 rules “too vague” (¶60), the Further Notice offers little guidance toward greater specificity. Part 64 is at the core of the Commission’s authority over local exchange carriers. The proposed rules are written as performance objectives -- an approach the FCC often prefers -- rather than detailed prescriptions about how to fulfill the requirements. On the other hand, an obvious goal of greater specificity

would be to boost economies of scale and scope in the manufacture, connection and operation of MLTS. The relative merits of general performance objectives versus prescriptive equipment and service parameters applicable across the country is a policy issue the FCC thus far has been unwilling to grapple with.<sup>4</sup>

Nearly three years ago, NENA and the members of its Private Switch Study Group proposed a new Section 68.319 containing, among other suggestions, subsections (c) and (d). The latter called for transmission of a unique number “to identify individual telephone sets or aggregates” contained within a discrete Emergency Response Location. (“ERL”) The associated Model Legislation for states defined the ERL and the unique identifier, Emergency Location Identification Number. (“ELIN”)<sup>5</sup> A simple conceptual model of this database is described at Attachment A.

The order’s treatment (§62) of the proposed Part 68 rules is circular. Having concluded that the states are in a better position to determine the specifics of MLTS E911 in their localities, the FCC declines to decide whether a set of national regulations might make MLTS easier and less costly to implement. The Further Notice says nothing explicit about Part 68, but implies (§116) continuing difficulty with the notion of federal jurisdiction over MLTS manufacturers and equipment operators. *See also*, §63 of the order.

For the reasons discussed below, we believe the Commission’s authority over MLTS equipment manufacturers in these circumstances is clear. If the authority is translated into an

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<sup>3</sup> Our count shows only 12 states have MLTS E911 regulations at this time, and of these only Illinois treats the subject comprehensively.

<sup>4</sup> However, the call for comment on the ISDN network interface standard (Further Notice, §117) is a step in the direction of policy guidance.

<sup>5</sup> MLTS Proposal of NENA and APCO, July 24, 2001.

effective set of regulations, at Part 68 or elsewhere, we believe that assertion of jurisdiction over equipment operators or users may not be necessary. Rather, the availability and affordability of MLTS E911 equipment will lead operators and users voluntarily to conclude that the correct solution for public safety is also a sound business decision. To the extent volition fails, state police power remains available if not preempted.

#### LEGAL BASIS FOR MLTS REGULATION

Much of the regulation imposed on manufacturers has been explicitly directed by Congress.<sup>6</sup> At other times, the FCC has relied on general authority in Sections 1 and 4 of the Communications Act, as in the creation of Part 68 of the Rules on wire equipment interconnection and in the adoption of Section 22.921 requiring a “rollover” feature in cellular telephone receivers.<sup>7</sup> Occasionally, the Commission will cite its “ancillary authority” to carry out the purposes recited in Section 1 of the Act.

**The Broadcast Flag Order.** A recent exercise of ancillary authority was the decision to impose “broadcast flag” restrictions on redistribution of digital TV content, in the professed interest of encouraging (or not discouraging) ample creation of programming for the DTV medium.<sup>8</sup> Defending its authority to impose the restrictions (Broadcast Flag Order, ¶¶27-35), the Commission stated:

We recognize that the Commission’s jurisdiction over manufacturers of equipment in the past has typically been tied to specific statutory provisions and that this is the first time the Commission has exercised ancillary jurisdiction over consumer equipment manufacturers in this manner. *Id.*, ¶32.

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<sup>6</sup> See, e.g., Sections 302, 303(s), 330(a).

<sup>7</sup> Further Notice of Proposed Rulemaking, 17 FCC Rcd 25576, at n. 220. (“Notice”)

<sup>8</sup> *Digital Broadcast Content Protection*, MB 02-230, FCC 03-273, released November 4, 2003, ¶4. (“Broadcast Flag Order”)

The Broadcast Flag Order explains further:

Ancillary jurisdiction may be employed, in the Commission’s discretion, where the Commission’s general jurisdictional grant in Title I of the Communications Act covers the subject of the regulation and the assertion of jurisdiction is “reasonably ancillary to the effective performance of [its] various responsibilities.”<sup>9</sup>

The Broadcast Flag Order found that television receivers are among the “instrumentalities, facilities [and] apparatus” associated with both wire and wireless communication and are therefore covered by statutory definitions that bring them “within the scope of the Commission’s general authority outlined in Section 2(a) of the Communications Act.” *Id.* The specific restrictions on digital content redistribution are reasonably ancillary both to the FCC’s historic responsibilities for TV broadcasting and to more recent Congressional instructions as to DTV:

The statutory framework for the [DTV] transition, coupled with the support in the legislative history and the Commission’s ongoing and prominent initiatives in the area, make it clear that advancing the DTV transition has become one of the Commission’s primary responsibilities under the Communications Act at this time.<sup>10</sup>

In the FCC’s judgment:

[A]bsent redistribution control regulation for DTV broadcasts, the record indicates that content providers will be reluctant to provide quality digital programming to broadcast outlets and will instead direct such content to pay television systems that can implement adequate content protection mechanisms. [citation omitted] The diversion of high quality digital programming away from broadcast television will lead to an erosion of our national television structure.<sup>11</sup>

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<sup>9</sup> ¶29, quoting from *U.S. v. Southwestern Cable Co.*, 392 U.S. 157 (1968). Given the need for ancillary jurisdiction to be grounded in some general grant of authority, the fine distinctions as to whether a power *springs* from Title I or is *ancillary to* the purposes in Title I need not detain us here.

<sup>10</sup> Broadcast Flag Order, ¶30.

<sup>11</sup> Broadcast Flag Order, ¶31.



**The MLTS Regulatory Nexus.** Just as the Commission grounded its DTV content redistribution restrictions in Sections 1 through 4 of the Communications Act, so it has properly proposed to find MLTS regulatory authority on the basis that the equipment is among the “instrumentalities, facilities [and] apparatus” incidental to wire and wireless communication.<sup>12</sup> Again, without needing to decide whether this authority springs from Title I or is reasonably ancillary to the purposes expressed there, it suffices to say that a strong link exists between MLTS E9-1-1 compliance and the “effective performance” of the Commission’s responsibilities.<sup>13</sup> The vital mission of “safety of life and property” (Notice, n.221), of course, is an added Title I purpose not found in the Broadcast Flag Order analysis.<sup>14</sup>

From the outset of debate about wireless E9-1-1, the FCC has recognized the need to consider the parallel problem of locating calls from stations passing through a Private Branch Exchange (“PBX”), a type of telephone switch frequently used in multi-unit business office buildings or residential multiple dwelling units (“MDUs”).<sup>15</sup> However, despite two full days of special hearings in September of 1996 and the submission of two broadly supported “consensus” proposals for rules to address the problem, no decisions have emerged. The Notice is both an opportunity to refresh the record and to reach some conclusions.

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<sup>12</sup> Notice at ¶91, n.221, citing *Computer and Communications Industry Association v. FCC*, 693 F.2d 198 (D.C. Cir. 1982), cert. denied, *Louisiana Public Service Commission v. FCC*, 461 U.S. 938 (1983).

<sup>13</sup> *U.S. v. Southwestern Cable*, note 6, *supra*.

<sup>14</sup> Citing Titles I and II plus Section 706 of the Communications Act in a fashion that also can be applied here, the Commission justified its extension of the so-called “OTARD” rule to cover non-video “fixed wireless services” as well as video small-dish antennas, despite the lack of explicit Congressional permission. First Report and Order, WT Docket 99-217, 15 FCC Rcd 22983 (2000), ¶101.

<sup>15</sup> Notice of Proposed Rulemaking, 9 FCC Rcd 6170 (1994), at ¶¶19-31.

In the 10 years since 1994, Congress has spoken both specifically and generally about the importance of automatic identification and location of wire and wireless callers. In the first category is the Wireless and Public Safety Communications Act of 1999 (“1999 Act”), whose stated purpose is

[T]o encourage and facilitate the prompt deployment throughout the United States of a seamless, ubiquitous and reliable end-to-end infrastructure for communications, including wireless communications, to meet the Nation’s public safety and other communications needs.<sup>16</sup>

Section 3 of the 1999 Act ordered the Commission to “designate 9-1-1 as the universal emergency telephone number within the United States for reporting an emergency to appropriate authorities and requesting assistance.” The designation expressly covered “both wireline and wireless telephone service.”<sup>17</sup>

Plainly, the emergency call infrastructure is not “seamless, ubiquitous and reliable” if the millions of employees or residents whose workplaces or multiple dwelling units (“MDUs”) are served by PBXs and other MLTS devices cannot be identified or located by police, fire or medical responders.

Another important Congressional signpost, albeit more generic than the 1999 Act, was the addition in 1996 of Section 256 of the Communications Act. While that section disclaims any intent to add to the FCC’s powers, the words of §256(a)(2) should reassure the FCC that exercising ancillary authority to make MLTS E9-1-1 more reliable is congruent with Congressional intentions:

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<sup>16</sup> Public Law 106-81, Section 2(b).

<sup>17</sup> Section 3 is codified at 47 U.S.C. §251(e)(3). The Commission responded to the 1999 Act’s mandate by establishing federal transition periods for areas of the country where 9-1-1 emergency dialing was not yet in use. Fifth Report and Order, CC Docket 92-105, FCC 01-351, released December 11, 2001, ¶5.

(2) to ensure the ability of users and information providers to seamlessly and transparently transmit and receive information between and across telecommunications networks.

In the MLTS case, of course, the networks requiring a seamless traverse are the Public Switched Telephone Network (“PSTN”) and the dedicated 9-1-1 systems.

**Regulation of whom?** While the analogy to DTV content redistribution regulations relates chiefly to ancillary jurisdiction over manufacturers -- of TV sets on the one hand, MLTS devices on the other -- there is nothing in the concept of ancillary jurisdiction that necessarily limits the Commission’s authority to makers of equipment. Thus, the “MLTS Proposal of NENA and APCO” submitted for the record of Docket 94-102 on July 24, 2001, and opened for comment by the Notice, addresses -- in recommended Part 68 revisions -- not only manufacturers but also MLTS owner/operators. Such persons could be employers or distributors of the equipment. The Proposal also suggests Part 64 amendments applicable to carriers, but the jurisdictional nexus there is straightforward.

Despite the protestations of some commenters on the Notice, particularly the Ad Hoc Telecommunications Users Committee,<sup>18</sup> we doubt the FCC is precluded from acting on a problem simply because it involves the workplace. We cannot accept Ad Hoc TUC’s assertions that the issue of 9-1-1 access through MLTS on business premises belongs with the federal Occupational Safety and Health Administration or its state counterparts rather than the FCC. Ad Hoc TUC expressed the same view in negotiations during 1996 and 1997, yet found its way to a 1997 compromise that is similar in many respects to the proposed model legislation.

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<sup>18</sup> Ad Hoc TUC was a supporter of an earlier industry/public safety compromise. Notice, ¶89, n.211.

In our reading, the existing OSHA rules are simply not detailed or comprehensive enough to provide the help public safety responders need.<sup>19</sup> Moreover, Ad Hoc TUC is careful not to claim, and cannot claim, that OSHA's workplace authority is exclusive of other federal agencies. Were this the case, to cite but one example, the FCC could not have promulgated the special RF radiation exposure limits for "occupational/controlled" environments found at 47 C.F.R. §1.1310. If there were any doubt on this score, the FCC and OSHA could enter into a memorandum of understanding through which OSHA would accede to FCC expertise in this realm of public safety telecommunications.<sup>20</sup>

Even if the FCC were reluctant to extend its jurisdiction to persons neither carriers nor manufacturers, the agency understands the leverage available through regulation of the basic manufactured product. Even this can be accomplished indirectly, to wit:

[A]lthough our Part 68 rules appear to establish elaborate requirements for terminal equipment manufacturers, the fundamental obligation that the rules impose is on the local exchange carriers -- they must allow Part 68-compliant equipment to be connected freely to their networks. [footnote omitted] . . . [B]ut equipment that is not Part 68-registered is not freely connectable to the public switched telephone network and thus has limited marketability.<sup>21</sup>

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<sup>19</sup> For example, 29 CFR §1910.268 applies to work conditions in "telecommunications centers" and in other premises where the essential business is telecommunications. It has little or nothing to say about reporting of and responding to emergencies in workplaces where telecommunications is simply a tool in the conduct of some other enterprise. Likewise, emergency escape routes are important, but they do not address the central issue in enhanced 9-1-1: how to locate and call back, if necessary, a person who cannot escape unaided. *See*, Ad Hoc TUC Comments at 11, n.29.

<sup>20</sup> *See, e.g.*, "Nationwide Programmatic Agreement for the Collocation of Wireless Antennas" executed by the FCC, the ACHP and the State Historic Preservation Officers ("SHPOs"). The Agreement is Attachment 1 to a pending Notice of Proposed Rulemaking, WT Docket 03-128, FCC 03-125, released June 9, 2003.

<sup>21</sup> 2000 Biennial Review of Part 68, 15 FCC Rcd 24944 (2000), ¶7.

If the FCC's jurisdiction is firmly founded, of course, the agency can proceed directly or indirectly. An example of the former is the adoption of the "rollover" rule for cellular carriers at Section 22.921, which the Commission applied to both service providers and manufacturers.<sup>22</sup>

### CONCLUSION

For the reasons discussed above, E9-1-1 rules should be applied to satellite ATC-only calls unless this is shown to be technically infeasible. The treatment of MSS calls handed off between space and ATC segments of the network should be guided by the work of NRIC VII. While NRIC VII likewise will be attempting to fashion recommendations on MLTS E9-1-1, the FCC should also use this Further Notice as an opportunity to cut through the ambiguities of shared federal and state responsibility that have dogged this subject for eight years. Finally, the agency should resolve any doubts about federal authority over MLTS equipment manufacturers where public safety and homeland security are so vitally concerned.

Respectfully submitted,

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By \_\_\_\_\_

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<sup>22</sup> Second Report and Order, CC Docket 94-102, 14 FCC Rcd 10954 (1999), ¶88. Virtually all the major wireless equipment manufacturers played a positive role in the adoption of the rule, and none raised at the time any legal impediment.

Conversion of MLTS Telephone  
Station Numbers to ELINs

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Basically, the MLTS manufacturer provides a feature of the following capability:

<u>Station Nbr</u>	<u>ELIN</u>
3256	NXX-3256
3678	NXX-3256
4290	NXX-3256
3578	NXX-3578
3579	NXX-3578
3589	NXX-3578
etc	

Multiple station numbers are associated with specific ELINs. This database is accessed when a 9-1-1 dialed call is recognized in the MLTS system. The first three stations are in a common area, and are identified and located via the 3256 number, which is also the dialable call back number for that area. Thus each station does not have to be dialable (saving expense), the ERL area is adequately identified, and only the ELIN numbers require ALI records for ERL data.

So a simple software table, probably linked for maintenance with the MLTS station assignment logic, does the job at low cost, thus making the business owner or user happy. But even this requires some standard conceptual approach, in order to avoid multiple, costly methods that have to be adapted to by the users. Such an approach is the aim of proposed Section 68.319(c) and (d).

Additional details may be found in "Private Switch (PS) E9-1-1 Database Standard," NENA 06-003, February, 2003, at:

[http://www.nena.org/9-1-1TechStandards/nena\\_recommended\\_standards.htm](http://www.nena.org/9-1-1TechStandards/nena_recommended_standards.htm).